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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/504,330	02/14/2000	Paul H. Leamon	4889:70	7759

21909 7590 11/25/2003

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EXAMINER

NGUYEN, CUONG H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/504,330

Applicant(s)

LEAMON, PAUL H.

Examiner

CUONG H. NGUYEN

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 12-17, 19-24, 26-28, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-17, 19-24, 26-28, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is the answer to the RCE and the preliminary amendment received on 10/27/2003, which papers have been placed of record in the file.
2. Claims **1-7, 12-17, 19-24, 26-28, 30-31** are pending in this application.

Response

3. The examiner withdraws previous grounds of rejections on 35 USC 103(a) for a combination of **Crockett** (US Pat. 5,325,292, and Maggie Klenke's teachings because claims have been amended in the RCE to overcome those prior art rejections. However, new grounds of rejections on 35 USC 101 based on missing a field on technology have been applied for claims 1-7, 12-17, 19-24, 26-28, and 30-31.

4. Practical Application in the Technological Arts:

When an invention is reduced to a practical application in the technological arts, the invention is statutory. Therefore, the claimed invention must produce a "useful, concrete and tangible result" (the pending claims satisfy this requirement); **and** the claimed invention must utilize technology in a non-trivial manner (i.e., the claim **MUST** include a limitation in the technological arts that enables a useful, concrete, and tangible result.

The phrase "technological arts" is synonymous with the phrase "useful arts" as it appears in Article I, Section 8 of the Constitution, In re **Waldbaum**, 173 USPQ 430 (CCPA 1972). For a claim to be statutory, it must be in the technological arts. In re **Musgrave**, 167 USPQ 280 (CCPA 1970) and In re Johnston, 183 USPQ 172 (CCPA 1974).

The technological arts inquiry must focus on whether the claimed subject matter is statutory. In re **Toma**, 197 USPQ 852 (CCPA 1978). In that

case, **Toma** held "that the method of enabling a computer to translate natural languages in the technological arts, i.e., it is a method of operating a machine".

Claim Rejections - 35 USC §101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requires of this title.

5. Claims **1-7, 12-17, 19-24, 26-28, 30-31** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The invention as recited in those pending claims is merely an abstract idea that is not within the technological arts. Mere ideas in the abstract (i.e., abstract idea) that do not apply the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. In the body of these claims must recite technology. If the invention in the bodies of these claims are not tied to technological art, environment, or machine, the claim is not statutory. Ex parte **Bowman**, 61 USPQ2d 1665, 1671 (BD. Pat. App. & Inter. 2001) (Unpublished), even though **Bowman** is not precedential, **Bowman** is being cited for its analysis of whether the claim is in the technological arts; also note MPEP 2106 IV 2(b).

Merely nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the

component does not affect or effect the underlying process. Claim **24** merely says that a given call type is associated with a given ACD.

6. These references are related to the claimed subject matter:

- **Crockett** (US Pat. 5,325,292, published on 6/28/1994) about a tour/schedule generation for a force management system.
- **FOSTER ROBIN H;GOURLAY WILLIAM E** , (JP2000209351 - 2000-07-28), CALL SELECTION AND AGENT SELECTION PROCESS IN CALL CENTER BASED ON AGENT PERSONNEL ARRANGEMENT SCHEDULE.
- 7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CUONG H. NGUYEN** whose telephone number is 703-305-4553. The examiner can normally be reached on 7 am - 330 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **VINCENT A. MILLIN** can be reached on 703-308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Cuong H. Nguyen

CUONG H. NGUYEN
Primary Examiner
Art Unit 3625

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